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NOV 24 2004

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Federal Communications Commission  
Office of Secretary

Re: Ex Parte Presentation, *Unbundled Access to Network Elements*,  
WC Docket No. 04-313, CC Docket No. 01-338

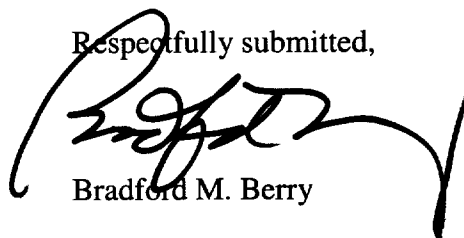
Dear Ms. Dortch:

Enclosed for filing on behalf of BellSouth Telecommunications, Inc. ("BellSouth") in the above referenced matters please find an original and three copies of a redacted version of a white paper entitled "BellSouth's Special Access Tariffs Do Not Impede Facilities-Based Competition Or Increase The Risk Of Providing Local And Long-Distance Services" ("BellSouth's Special Access Tariffs White Paper"). BellSouth's submission responds to the ex parte filing by AT&T Corp. on November 12, 2004.

Also enclosed are the original and three copies of the highly confidential and unredacted version of BellSouth's Special Access Tariffs White Paper. BellSouth requests that the confidential and highly confidential information contained in BellSouth's Special Access Tariffs White Paper be protected pursuant to the Protective Order in *AT&T Corp. v. BellSouth Telecommunications, Inc.*, File No. EB-04-MD-010, and pursuant to 47 C.F.R. § 1.731. BellSouth therefore requests that this version not be placed in the public files.

Should there be any questions, please do not hesitate to contact me at 202.663.6930.

Respectfully submitted,



Bradford M. Berry

Encl.

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**BELLSOUTH'S SPECIAL ACCESS TARIFFS DO NOT IMPEDE FACILITIES-BASED COMPETITION  
OR INCREASE THE RISK OF PROVIDING LOCAL AND LONG DISTANCE SERVICES**

**A. Introduction and Executive Summary.**

This responds to the "white paper" submitted *ex parte* by AT&T Corp. ("AT&T") entitled "Bell OPP Tariffs Both Impede Facilities-Based Competition And Increase The Risk Of Providing Local and Long Distance Services" ("AT&T *Ex Parte* White Paper"), in which AT&T contends that BellSouth's special access tariffs "contain 'lock-up' provisions that are manifestly discriminatory and unreasonable and the Commission should declare those provisions unlawful and unenforceable."<sup>1</sup> AT&T also asserts that, in order to secure BellSouth's "'best' rates," it must subscribe to "an 'overlay tariff' under which a carrier must agree to 'lock-up' a certain level of traffic with the Bell based on its historical special access demand," and that "[t]hese conditions quite plainly deter special access subscribers from self-deploying facilities or shifting to bypass providers."<sup>2</sup>

This rulemaking proceeding is not the proper forum for the Commission to determine the legality of the Bell Companies' special access tariffs. Those issues have been fully briefed in a Section 208 proceeding brought by AT&T. *See In the Matter of AT&T Corp. v. BellSouth Telecommunications, Inc.*, File No. EB-04-MD-010. Here, just as in the Section 208 proceeding, AT&T mischaracterizes BellSouth's tariffs and the impact of those tariffs on the special access marketplace. AT&T's contentions that BellSouth's tariffs are "discriminatory and unreasonable" are wholly without merit, for the following reasons:

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<sup>1</sup> AT&T *Ex Parte* White Paper at 1.

<sup>2</sup> *Id.*

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- BellSouth's two overlay discount plans for special access services cannot possibly be characterized as "lock up" plans under Commission precedent, because the vast majority of the revenues that BellSouth receives under these plans are attributable to customers who are "committed" to the purchase of specific volumes *for less than a year*.
- Notwithstanding AT&T's allegations, the price paid by customers to BellSouth for special access services has declined.
- Contrary to AT&T's faulty economic reasoning, overlay discount plans such as those offered by BellSouth cannot be said to "impede facilities-based competition" just because they offer lower prices to customers in return for a minimum volume commitments based on historical special access demand.
- BellSouth's plans cannot be said to have *any* anticompetitive impact, because: (i) a substantial amount of BellSouth's special access revenues remain uncommitted under the plans, and, therefore, are not constrained by those plans from being diverted to development of alternative facilities; (ii) there is little relationship between the levels to which customers have voluntarily committed under the plans and the historical usage that AT&T alleges to have a lock up effect; (iii) the record is devoid of evidence that any BellSouth customer has decided not to divert its special access business because of a commitment under an overlay plan; and (iv) special access markets have become more competitive, not less, since the inception of BellSouth's plans.
- The historical usage component of BellSouth's overlay discount plans does not unreasonably discriminate among BellSouth's customers because those customers are not similarly situated. BellSouth's customers have vastly different past spending patterns and, under BellSouth's older and more popular discount plan, the amount of a customer's discount is based on what it *spends*, not the volume to which it commits under the plan.
- The fact that BellSouth's discounts are offered "on a region-wide and service-wide basis" does not make them improper or anticompetitive. The Commission has long approved volume discounts for special access services without any indication that discounts across geographic areas or across capacity levels are somehow disfavored.
- BellSouth's overlay discount plans reasonably advance BellSouth's legitimate business objectives of (1) encouraging the continued use of special access facilities that BellSouth already has deployed; and (2) ensuring meaningful discounts for all of its eligible special access customers.

**B. BellSouth's "Overlay" Tariffs for Special Access Services.**

There are volume discount plans for BellSouth's special access services that offer "overlay" discounts — billing credits over and above discounts taken under other BellSouth plans — to BellSouth's special access customers who commit to specified volumes of purchases for a specified term — the Transport Savings Plan ("TSP") and the Premium Service Incentive Plan ("PSIP"). Under both plans, the specified commitment level may be established via one of two methods: (1) on the basis of 90 percent of the customer's annualized special access purchases from BellSouth for the six-month period immediately prior to the customer's initial commitment; or (2) on the basis of an amount *chosen by the customer* that exceeds 90 percent of the base year special access purchases. Under the TSP, the customer's initial commitment level does not change over the life of the plan unless the customer chooses to raise that commitment. Under the TSP, larger customers generally qualify for higher "volume bands" which, in turn, provide higher discounts.

BellSouth first offered the TSP in April 1999. BellSouth first offered the PSIP in March 2004. The TSP and the PSIP are no longer available to new customers as of June 2004. Current subscribers are "grandfathered" and therefore can continue to obtain discounts.

**C. BellSouth's Plans Are Not "Lock-Up" Plans.**

BellSouth's special access tariffs are not "lock up" plans. The plans do not require BellSouth's customers to purchase all of their special access services from BellSouth. Customers are free to purchase those services from whomever they want without penalty, as long they meet their agreed-upon commitments. BellSouth's plans are *not* suspect "growth tariffs," which the Commission has defined as pricing plans under which incumbent LECs offer reduced per-unit access services prices to customers that commit to purchase a certain percentage *above* their past

usage.<sup>3</sup> The Commission generally has required LECs to specially justify growth tariffs using a cost study or other means.<sup>4</sup>

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**[End BST Highly Confidential**

**Information]** The Commission has made clear that an anticompetitive "lock-up" occurs only as a result of "certain long-term access arrangements."<sup>7</sup> AT&T itself acknowledges that a "lock up" requires, at a minimum, a "multi-year term."<sup>8</sup>

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<sup>3</sup> Fifth Report & Order and Further Notice of Proposed Rulemaking, *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers*, 14 FCC Rcd 14221, 14294 ¶ 134 (1999) (emphasis added) ("*Pricing Flexibility Order*").

<sup>4</sup> See Fourth Memorandum Opinion and Order on Reconsideration, *Transport Rate Structure and Pricing*, 10 FCC Rcd 12979, 12986 ¶ 17 (1995).

<sup>5</sup> AT&T *Ex Parte* White Paper at 7.

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<sup>7</sup> Report and Order and Notice of Proposed Rulemaking, *Expanded Interconnection with Local Telephone Co. Facilities; Amendment of the Part 69 Allocation of General Support Facility Costs*, 7 FCC Rcd 7369, 7463 ¶ 201 (1992) ("*Special Access Expanded Interconnection Order*").

<sup>8</sup> AT&T *Ex Parte* White Paper at 2; see also *id.* at 7.

Although BellSouth's PSIP has a three-year term, [Begin BST Highly Confidential Information]

[End BST

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**D. BellSouth's Plans Do Not Impede Facilities-Based Competition And Are Not Otherwise Anticompetitive.**

The TSP and the PSIP do not impede facilities-based competition in special access markets in violation of Section 201(b) of the Communications Act. A complainant alleging a violation under Section 201(b) bears the full burden in establishing that the challenged charge or practice is unreasonable.<sup>9</sup> A carrier has not violated Section 201(b) where it has reasonably and appropriately exercised its discretion in designing its offerings.<sup>10</sup>

AT&T's claim that BellSouth's plans are anticompetitive rests on its assertion that the plans' minimum commitment requirement causes BellSouth's customers to refrain from self-deploying facilities or shifting to bypass providers. The minimum commitment requirement is

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<sup>9</sup> See Memorandum Opinion and Order, *Sprint Communications Co., L.P. v. MGC Communications, Inc.*, 15 FCC Rcd 14027, 14029 ¶ 5 (2000); see also Memorandum Opinion and Order, *AT&T Corp. v. Bell Atlantic-Pennsylvania*, 14 FCC Rcd 556, 594 ¶ 88 (1998).

<sup>10</sup> See Memorandum Opinion & Order, *Allnet Communication Servs., Inc. v. Public Service Telephone Co.*, 11 FCC Rcd 12766, 12771, 12773 ¶¶ 13, 20 (1996); *Sprint Communications*, 15 FCC Rcd at 14029-30 ¶ 6 (noting that the fact that one carrier's rates are higher than another's does not, by itself, demonstrate unreasonableness under section 201(b)); Order on Reconsideration, *Erdman Technologies Corp v. U.S. Sprint Communications Co.*, 15 FCC Rcd 7232, 7245-48 ¶¶ 24-28 (1999) (noting that a company's choice not to follow industry standards does not necessarily make its actions unreasonable under section 201(b)).

anticompetitive, says AT&T, because customers save more money by availing themselves of the overlay discounts offered under either the TSP or the PSIP than they would by foregoing these discounts and obtaining special access through other means.

AT&T's claim defies economic logic. Neither Commission precedent nor basic antitrust principles support AT&T's contention that a supplier's volume discount program — which provides *lower prices* to customers — is *anticompetitive* simply because it attracts all or much of a buyer's business. Lower customer prices are a good economic result, one the antitrust laws are designed to promote. As the U.S. Supreme Court has stated: "Low prices benefit consumers regardless of how those prices are set, and so long as they are above predatory levels, they do not threaten competition."<sup>11</sup> Chairman Powell has expressed a similar view, stating that the Commission's competition policy "is to be guided by the view that we will let the market pick winners and losers and hopefully not government policy."<sup>12</sup>

Thus, a volume discount program is not anticompetitive just because it takes business away from a competing supplier. In order for a pricing program to be deemed anticompetitive, it must have the demonstrated *effect* of accounting for a sufficiently large share of the industry output that rival suppliers are forced either to operate at an inefficiently small scale (and thus incur higher costs) or to exit the industry. In the absence of such effects, volume commitments

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<sup>11</sup> *Brooke Group LTD v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 223 (1993) (quoting *Atlantic Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 340 (1990)).

<sup>12</sup> Remarks by Michael K. Powell, Chairman, Federal Communications Commission, Keynote Address at SUPERCOMM 2001, June 6, 2001; *see also* Fourth Report and Order, *Deployment of Wireline Servs. Offering Advanced Telecommunications Capability*, 16 FCC Rcd 15435, 15438 ¶ 7 (2001) ("[I]n adopting the 1996 Act, Congress consciously did not try to pick winners or losers . . . Rather, Congress set up a framework from which competition could develop").

are likely to *benefit* consumers by enabling them to realize price reductions they could not obtain absent such commitments. Under AT&T's mistaken theory, Section 201(b) would serve as a protective bulwark for *competitors*, not *competition* — a theory completely at odds with accepted antitrust principles and the Commission's expressed views on the subject.<sup>13</sup>

AT&T presents no evidence that BellSouth's plans (or, for that matter, the plans of any of the other Bell Companies) harm competition. In fact, the evidence indicates otherwise. As BellSouth has conclusively demonstrated, BellSouth's special access prices (whether measured in nominal or real terms) have consistently declined since the adoption of price cap regulation in 1996, and this decline has been greater since the Commission granted ILECs special access pricing flexibility.<sup>14</sup> That competitive pressures have forced BellSouth to reduce special access prices eviscerates AT&T's theory of competitive harm.

Moreover, even if it tried, AT&T could not carry its burden of establishing competitive harm under its own misguided economic standard. In fact, all available evidence suggests BellSouth's plans have had *no* effect on the prior decisions of its customers not to divert special

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<sup>13</sup> See, e.g., *Nynex Corp. v. Discon, Inc.*, 525 U.S. 128, 135 (1998) ("[T]he plaintiff . . . must allege and prove harm, not just to a single competitor, but to the competitive process, *i.e.*, to competition itself."); First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15812 ¶ 618 (1996) (Provisions of the Telecommunications Act should be construed, as "Congress intended, *pro-competition*" rather than "*pro-competitor*") (emphasis added); *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 458 (1993) ("The law directs itself not against conduct which is competitive, even severely so, but against conduct which unfairly tends to destroy competition itself."); *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488-89 (1977) ("The antitrust laws, however, were enacted for "the protection of *competition* not *competitors*"") (italics in original) (citing *Brown Shoe Co. v. United States*, 370 U.S. 294, 320 (1962)).

<sup>14</sup> See Ex Parte Letter from Glenn T. Reynolds, BellSouth, to Marlene Dortch, Secretary, FCC (November 10, 2004).

access purchases to competitive suppliers or to self-deployment, and that BellSouth's plans will have little or no such effect in the future. These conclusions inescapably result from the following four points:

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**[End BST Highly Confidential Information]**

Given this vast amount of uncommitted special access demand (plus the large quantity of special access services already provided by BellSouth's competitors), the TSP and the PSIP cannot possibly have an anticompetitive "lock up" effect on the market. BellSouth's plans simply do not have the demonstrated effect of accounting for a sufficiently large share of the industry output that rival suppliers are forced either to operate at an inefficiently small scale (and thus incur higher costs) or to exit the industry.

*Second*, as noted above, a TSP subscriber has the option of establishing a commitment level on the basis of an amount chosen by the customer that exceeds 90 percent of the base year special access purchases. **[Begin BST Highly Confidential Information]**

**[End BST Highly Confidential Information]**

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*Third*, the "harm" that AT&T says results from BellSouth's discount plans — that the plans "prevent . . . competitors from carrying any significant amount of incremental traffic over their own facilities, or sending such traffic to alternative wholesalers"<sup>15</sup> — is completely illusory. Quite aside from the issue of how BellSouth's customers determined their present commitments under the TSP (*i.e.*, whether customers voluntarily chose commitment levels above 90 percent of past spend), AT&T has presented no evidence — and BellSouth is aware of none — that it or any other carrier has decided not to divert special access demand because of its TSP commitment now in effect.

*Fourth*, special access markets have become *more* competitive, not *less*, since the inception of the TSP and the PSIP. A number of firms have begun to provide special access services within BellSouth's region in recent years, and these firms have attracted a significant volume of special access traffic. **[Begin BST Highly Confidential Information]**

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<sup>15</sup> AT&T *Ex Parte* White Paper at 5.

[End

**BST Highly Confidential Information]**

**E. BellSouth's Plans Are Not Discriminatory.**

AT&T's claim that BellSouth's overlay tariff is "unjust, unreasonable, and discriminatory in violation of § 201(b) and § 202(a), because carriers with identical traffic volumes are charged different rates,"<sup>16</sup> is likewise without merit. Among other flaws in AT&T's argument, BellSouth's customers who are willing to "commit" to the same volume of special access purchases but have different past spending patterns are not "similarly situated" and therefore need not be treated precisely the same under Commission precedent. Furthermore, BellSouth customers with different total spending levels who subscribe to the TSP enjoy very different levels of discount under that plan. That is because TSP discounts apply to the customer's *total* eligible purchases, not just the customer's *committed* purchases. It is eminently fair to require a customer who receives an overlay discount on, for example, \$500 million in special access services, to agree to a greater minimum volume commitment than a customer who stands to receive a discount on only half that amount.

**F. BellSouth's Plans Are Not Illegal Because They Are "Regionwide" And "Service-wide".**

AT&T's observation that overlay discounts are offered "on a region-wide and service-wide basis" adds nothing to its claims. In contesting this aspect of BellSouth's plans, AT&T

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<sup>16</sup> AT&T *Ex Parte* White Paper at 6.

simply takes issue with the Commission's long-standing decision to allow incumbent LECs to offer volume discounts for special access services. In the *Special Access Expanded Interconnection Order*,<sup>17</sup> the Commission reviewed certain LEC volume and term discounts for special access services, which inter-exchange carriers challenged on grounds that the discounts (i) were not "cost justified," (ii) "lock[ed] up the largest customers," and (iii) "unreasonably discriminate[d] in favor of the largest IXC's and thus undermine[d] interexchange competition."<sup>18</sup> The Commission mostly dismissed these claims and rejected calls for a requirement that a broad array of volume discounts be specifically cost justified. The Commission concluded that "reasonable volume and term discounts can be a useful and legitimate means of pricing special access services to recognize the efficiencies associated with larger volumes of traffic and the certainty of longer term deals."<sup>19</sup>

Not only has the Commission since refused to withdraw permission to offer these discounts, but it reaffirmed these prerogatives in the *Pricing Flexibility Order*.<sup>20</sup> In that *Order*, the Commission made clear that it was giving "authority to offer volume and term discounts . . .

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<sup>17</sup> *Special Access Expanded Interconnection Order*, 7 FCC Rcd 7369 (1992).

<sup>18</sup> *Id.* at 7458 ¶¶ 188-189.

<sup>19</sup> *Id.* at 7463 ¶ 199. Given that the record before the Commission was not sufficiently developed to allow it "to make definitive determinations concerning the lawfulness of specific discounts," the Commission directed the Common Carrier Bureau "to require the submission of cost support data for some of the largest existing discounts." *Id.* at 7463 ¶ 200. The Commission made clear, however, that further examination of these select discounts "*should not stand in the way of reforming our rules on LEC pricing by eliminating non-cost-based regulatory restraints with the implementation of expanded interconnection.*" *Id.* at 7463 ¶ 200 n.463 (emphasis added).

<sup>20</sup> *See Pricing Flexibility Order* at 14288 ¶ 123.

*in addition to the existing authority price cap LECs have to offer volume and term discounts."*<sup>21</sup>

In none of these decisions did the Commission indicate that the LECs could not offer these discounts regionwide or across different capacity levels (*i.e.*, DS1, DS3, etc.).

While AT&T complains that customers are forced to purchase competitive services along with less-competitive services in order to meet their commitment levels, this could be equally true of *any* high volume discount plan. That is, if AT&T subscribed to a BellSouth volume discount plan that effectively required AT&T to purchase special access from BellSouth throughout its region, but did not require AT&T to commit to a percentage of past spend, the result would be no different. In any event, as noted, AT&T's suggestion that commitment levels have compelled BellSouth's customers to forego opportunities to obtain more favorably priced special access services is false.

**G. BellSouth's Plans Reasonably Advance Legitimate Business Objectives.**

BellSouth's plans easily pass scrutiny under Sections 201(b) and 202(a) for the independent reason that they reasonably advance legitimate business objectives. Under Section 202(a), once the complainant shows that the defendant carrier has applied different terms and conditions to "like" services ordered by similarly situated customers, the burden shifts to the carrier to show that the discrimination is "reasonable." However, the carrier's burden under Section 202(a) is not onerous. In demonstrating that discrimination is reasonable, the carrier

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<sup>21</sup> See *id.* at 14289 ¶ 124 n.328 (emphasis added).

need only demonstrate that a "neutral, rational basis" supports the alleged disparity.<sup>22</sup> Here, such a basis supports the minimum commitments required by BellSouth's overlay tariffs.

*First*, the plans' 90 percent commitment requirement seeks to improve BellSouth's chances of recovering its substantial investment in already deployed special access facilities. Providing special access is a capital-intensive business — a point with which AT&T has manifestly agreed. In general, it takes committed demand to justify the expense of building and maintaining special access facilities. BellSouth has made and continues to make sizeable capital investments in this business by deploying facilities that are sufficient to meet customer demand. Reduced demand can mean that some of this investment is lost, particularly because special access facilities have extended investment recovery terms.

The TSP and the PSIP's minimum commitment requirement encourages customers not to quickly migrate traffic off large numbers of BellSouth's special access facilities. By encouraging continued use of the facilities that it already has deployed, BellSouth increases the likelihood that it will recover sunk costs. These include not only up-front fixed costs for new construction and rights of way, but also ongoing maintenance and enhancements for these facilities. Maintaining traffic over already deployed facilities allows BellSouth to allocate fixed costs over a higher volume of traffic, thereby facilitating recovery of those costs.

Particularly in the case of the TSP, requiring a meaningful volume commitment equal to a fraction of past purchases from BellSouth helps ensure that BellSouth receives something of value in exchange for the extra discount. As noted, the TSP is an *overlay* tariff that offers billing

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<sup>22</sup> *Reservation Tel. Cooperative v. FCC*, 826 F.2d 1129, 1136 (D.C. Cir. 1987) (quoting *NARUC v. FCC*, 737 F.2d 1095, 1133 (D.C. Cir. 1984)).

credits for services that customers have already purchased under BellSouth's term discount plans. Under the term plans, customers commit to maintain certain services for specified periods of time. But there are no minimum volume commitments.<sup>23</sup> The overlay feature of the TSP means that the discount is *in addition to* whatever discounts customers already may be receiving under BellSouth's term plans. The TSP's 90 percent requirement helps ensure that BellSouth receives something of value in exchange for the overlay discount. It seeks to condition the TSP's extra discount on a commitment beyond what the customer already has committed under the term plans. If there were no 90 percent requirement (or comparable requirement) under BellSouth's overlay plans, a customer could select a "volume commitment" level far enough below its effective commitment under BellSouth's term plans. Under this scenario, the "volume commitment" would be of no consequence and the TSP discounts would effectively be free.<sup>24</sup>

*Second*, the plans' 90 percent requirement ensures meaningful discounts for all of BellSouth's eligible special access customers. When BellSouth introduced the TSP in 1999, one of its goals was to provide some measure of discount based on volume in contrast to its discount

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<sup>23</sup> BellSouth's term plans are: the Area Commitment Plan ("ACP"), the Transport Payment Plan ("TPP"), and the Channel Services Payment Plan ("CSPP").

<sup>24</sup> For example, if a customer is already committing to spend 79 percent of its volume through a combination of agreements under BellSouth's term plans, BellSouth would have no reason to offer an *additional* discount for that same volume. **[Begin BST Highly Confidential Information]**

**[End**

**BST Highly Confidential Information]** A "choose-your-own" overlay discount system, however, could result in exactly that scenario; the above customer above might elect to commit to a volume that represents only 70 percent of past spend, thus giving BellSouth nothing in return for the additional discount. By requiring a commitment of 90 percent of past spend under the TSP and the PSIP, BellSouth has identified a valuable benefit — increased commitment to the use of its deployed facilities — for which it is willing to furnish an additional discount.

plans in place at the time, which focused on term commitments. However, BellSouth also sought to avoid creating a vast difference in pricing based on volume to ensure that it could provide attractive discounts across its customer base. Absent the 90 percent requirement (or comparable requirement), the present "band" structure would have to be revised to make the discounts for the largest customers even greater than they are already, in relative terms, for BellSouth's remaining customer base.

BellSouth's goal of creating a discount structure that provides lower prices to *all* of its eligible customers — not just the largest — responds to the market realities and is in every sense *procompetitive*. Small customers are a growing segment of BellSouth's market and BellSouth needs to keep these customers satisfied. BellSouth cannot risk alienating these customers by having discount plans that inordinately favor large customers, making it harder for the smaller customers to compete.

\* \* \*

In conclusion, the terms of the overlay discounts offered by BellSouth for its special access services do not, contrary to AT&T's assertions, "decrease competitive carriers' 'opportunities' to deploy their own facilities or use those of third-parties,"<sup>25</sup> nor do they violate Sections 201(b) or 202(a) of the Act. The Commission should disregard entirely AT&T's suggestion that BellSouth's special access services are not "relevant" to the Commission's impairment determinations under § 251(d) of the Communications Act.<sup>26</sup> The Commission

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<sup>25</sup> AT&T *Ex Parte* White Paper at 1.

<sup>26</sup> *Id.*

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similarly should reject AT&T's request that the Commission declare Bellsouth's overlay discount plans unlawful.